

11.19 THE TRIAL

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JOHN MAGEE,

FOR

PRINTING AND PUBLISHING A SLANDEROUS
AND DEFAMATORY

LIBEL,

AGAINST

RICHARD DALY, Esq.

HELD BEFORE THE

RIGHT HONOURABLE

LORD VISCOUNT CLONMEL,

BY A SPECIAL JURY

OF THE CITY OF DUBLIN.

At the Sittings by Nisi Prius of the Court of King's Bench,

AFTER TRINITY TERM,

VIZ. ON MONDAY, JUNE 28, 1790.

DUBLIN:

PRINTED AND SOLD BY

P. PYRNE, 108, GRAFTON-STREET.

1790.

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Rec. May 15, 1900.

T R I A L, &c.

ON Saturday, June the 26th, 1790, according to notice served, it was intended to try before the Right Honourable John, Lord Viscount Clonmel, Lord Chief Justice of his Majesty's Court of King's Bench, and a *special Jury*, a cause at *Nisi Prius*, wherein RICHARD DALY, Esq; Patentee and Manager of the Theatre-Royal, Crow-street, Dublin, was Plaintiff, and JOHN MAGEE, Printer and Proprietor of the Newspapers, called, *The Dublin Evening Post*, and *Weekly Packet*, Defendant; but his Lordship being, according to order, obliged to try several other important causes which would render it impossible to enter into that case on that day, declared that he would positively proceed with the abovementioned trial on the Monday morning following; and at the same time gave notice, that the Defendant, John Magee might, if he pleased, move for a *Habeas Corpus*, for liberty to come into court to attend in person the said trial.

On Monday morning, June 28th, 1790, a little after nine o'clock, the Lord Chief Justice being seated on the bench, and Mr. John Magee brought

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into

into court, the names of the jurors were called over, when it appearing that there were not a number sufficient to compose a jury, (owing it is supposed, to the earliness of the hour) a motion was made to postpone the trial, this was objected to by the Counsel for the Plaintiff, who were satisfied in this case to try the cause by a *tales de circumstantibus*, and take the first twelve respectable men who appeared in court.

At length, after waiting a short time, twelve of the special Jury appeared, and were sworn as follows :

Ald. Wm. Alexander,	Wm. Bibby, Merchant,
Geo. Grierson, Bookseller,	Charles Ward, Esq;
Wm. Kilbie, Merchant,	Hen. Steevens Reily, Esq;
James Bamber, Merchant,	Hen. Darley, Merchant,
William Lindsay, Esq;	John Chambers, Esq;
George Palmer, Esq;	Thomas Reed, Merchant.

The Counsel on behalf of the Plaintiff were :

Mr. Serjeant Duquery,	George Joseph Browne, Esq;
Pat. Duigenan, Esq; LL. D.	Thomas Fleming, Esq;
Michael Smith, Esq; LL. D.	John Ball, Esq;
Beresford Burston, Esq;	Jonas Greene, Esq;
The Hon. Simon Butler,	A N D
John Egan, Esq;	John Philpot Curran, Esq.

Counsel on the part of the Defendant:

Arthur Browne, Esq;	Chamberlaine Walker, Esq;
Charles O'Neil, Esq;	A N D
George Ponsonby, Esq;	Richard Guinness, Esq.

The case was opened by *Counsellor Greene*, who stated, that this was an action brought at the suit of *Richard Daly*, the Plaintiff, in order to recover compensation for damages sustained by him, in consequence of a libellous Poem, published by the Defendant, *John Magee*, in the above Newspapers, on the 28th and 30th of May, 1789, and
other

other subsequent libellous paragraphs, for which the plaintiff had before marked his action against the Defendant, and laid his damages at 8000*l*.

Counsellor Greene then read from the declaration, the poem before-mentioned.

He was followed by Mr. *Serjeant Duquety*, who stated in the most eloquent and forcible terms which language could express, the case of the Plaintiff.

He began with an exordium, addressed to the Jury—he called their attention to one of the most important causes that ever came before twelve men—he hoped they had come into court divested of all prejudice, or partiality, totally uninfluenced by whatever they might have heard out of doors—that from the evidence to be then produced, and from that only, they would bring in their verdict—if they were convinced in their minds upon hearing the whole of the charge, that the Plaintiff had sustained no damage in character or property, that then they would give a verdict for the Defendant; but if on the contrary, it plainly appeared, that there was a malicious, deliberate, and continued design to injure the Plaintiff, by the several libellous publications hereafter to be mentioned, and that in consequence, Mr. *Daly* was visibly and materially damaged in reputation and property, then he trusted they would, as honest men, give whatever loss they in conscience should imagine he sustained.

He then stated, that Mr. *Daly* was Manager of the Theatre-royal in this city—that he obtained a patent from Government for the said theatre—that in rebuilding and necessary improvements of it he had expended upwards of 12,000*l*. besides which he was continually in the habits of additional expence incidental to such an undertaking—that Mr. *Daly* was also Manager of the Theatre-royal

Theatre-royal, Cork, and of the theatres of Limerick, Drogheda, Newry, &c.

That, from the nature of his situation, as Manager of a public Theatre in the capital of a kingdom, he was, infinitely more than what a private character possibly could be, exposed to the attacks of slander and misrepresentation—that any such slander or misrepresentation must sink deeper, and have a greater effect on him than on a private individual—and that the man of all others from whom he should be most likely to dread that slander, as most capable of conveying it, and contributing to his ruin, was the Proprietor and Printer of a popular public Newspaper.

That those terrors were abundantly realized in the Newspapers before-mentioned, through the malice of the Defendant, and his ruin nearly completed;—in those extensive publications he had been held out, day after day, week after week, nay, month after month, as the object of public odium, as a monster, whose accumulated crimes rendered him unfit for society—he was branded as a sharper, gambler, vagabond, nay, even murderer—the very repetition of those epithets were shocking!

He had searched in his brief, in order to try if he could find any cause assigned for such wanton, such wicked defamation—but he would venture to say no such cause had existed, on the contrary, he had every reason to expect fair, friendly, and honourable treatment. He observed, no station in life however exalted, but must suffer from the envenomed tongue of slander, no situation so low, but must be still depressed by the withering hand of defamation, but if there was any situation in which good character and professional abilities were peculiarly valuable, and advantageous, it was that of the Manager of a theatre;—consequently,

quently, if there is in society a character more liable than another to be injured by calumny and misrepresentation, it must be that of a Manager; the very existence of his fortune depends upon general opinion, the sources of his prosperity originate from the estimation he is held in by the public, whose whims, caprice, and prejudices he is at all times exposed to, and who are in fact the sovereigns of the day, how base and infamous then must be every effort to misrepresent and blast the honest efforts of a man who by every laudable means was endeavouring to provide for a numerous offspring.

To illustrate the powerful effects of public character, he instanced the well-known case of Mr. Sheridan, formerly Manager in this city, a gentleman of talents, education, and high professional reputation;—it was an established fact, that no Manager ever took more pains with the stage, or deserved more from the public; yet was he irrecoverably ruined by the slander of a faction artfully raised against him;—the unceasing labours of many years, in one moment, torn from him, and obliged to seek in another kingdom, a subsistence ungratefully denied him by his native country. This picture he contrasted with that of Mr. Garrick, who, at the head of a London theatre, had amassed a fortune of an hundred thousand pounds, merely because he had the good luck to preserve popular opinion; thus, because he had the happiness never to excite the breath of defamation against his good name or talents, he died possessed of a princely fortune, whilst Mr. Sheridan's fate was poverty, because he had the misfortune to be made the object of unmerited defamation. He had searched his brief, in order to see if any cause had been stated for this cruel treatment offered to his client by the Defendant, but
could

could find no reason alledged ;—what then could induce him to such wanton, such unprovoked, such wicked attacks? Could not the movements of Russia, of Prussia, of Germany, or the other empires of Europe—Could not the affairs of Great-Britain afford fitting matter for a newspaper, without having recourse to the slander of Mr. *Daly*, who seemed to have occupied more of his newspapers, than all the states and empires of Europe put together. But the mischief occasioned by these publications did not end here ;—the Plaintiff had frequent occasions for recourse to England and other kingdoms, to engage performers of merit from thence to this Theatre ; but such was the consequence of those defamatory representations of his character and credit, that no performers of eminence would engage with him, but upon terms equivalent to the risk they were supposed to run of not being paid. Such an impression had those paragraphs made upon the minds of the public, that Mr. *Ryder*, the favourite popular actor of this kingdom, whose abilities were so deservedly esteemed in this country, and who had been brought over by the Plaintiff at a very considerable salary, (twenty pounds per night,) and from whom he had the highest expectations, very often performed to a sum not equal to that paid him for the night—that sometimes the receipts of the whole house did not exceed thirty shillings, and that frequently the house had been dismissed for want of company on nights when he was advertised for a favourite character, in conjunction with a very respectable set of performers ;—that these circumstances could be attributed only to the influence of those inflammatory paragraphs—that many persons were deterred from visiting the Theatre, from the representations in the newspapers of the Defendant—
that

that it was filled with bludgeoneers, placed there on purpose to breed riots, and disturb the peace of the Theatre, and that no man would chuse to risk the safety of his wife and daughter, or that of his own person, in such a situation. From these circumstances, therefore, the receipts of the Theatre visibly declined, and the plaintiff suffered materially in his property as well as reputation.

That, not content with these malicious attacks upon his public character, and professional pursuits, the Defendant had even pursued him into the sanctuary of his domestic peace, where he had lain up all his happiness, and where alone he expected an asylum from those wicked unprovoked attacks, by inclosing, in a letter of his own hand writing, certain of those publications to an amiable and worthy wife, to wound her tender bosom, and thus endeavour to extend the injury to the tenderest and most unprotected part of the creation. In this point of view, who could behold without horror, his endeavours to entail infamy upon six innocent, unoffending children, who were reared up in the hopes of a decent inheritance from the professional labours of their father; and who had now no other prospect than a ruined and blasted fortune! and, such a situation was the Plaintiff reduced to, that his house was deserted, himself excluded from all intercourse with his dearest and nearest friends and acquaintance, as every man was deterred from visiting him, by the apprehension of becoming the object of public ridicule and defamation.

The most obvious mode, he said, of estimating Mr. *Daly's* damages, was, to suppose the case of a merchant, whose trade was destroyed, and whose customers were dispersed by the slanderous misrepresentation of his character and professional conduct. In a much more eminent degree was
Mr.

Mr. *Daly* situated; the public mind had been poisoned by similar means against him, and the consequences were the loss of his reputation, and the ruin of his professional livelihood. Therefore, as honest, conscientious men, well acquainted with the inestimable value of character in every station of life, he trusted the Jury would find a verdict for his Client, with damages proportioned to the injuries he sustained.

The first witness produced, was *Charles Este*, Esq. Secretary of the Stamp-Office, who was examined by Mr. *Browne*.—He proved two affidavits, which had been made by Mr. *Magee*, wherein he swore, he was the sole proprietor of *The Dublin Evening Post*, and *Magee's Weekly Packet*.

Sir Frederick Flood was also examined by Mr. *Browne*, he proved the affidavit of Mr. *John Magee*, made before him, when a Commissioner of Stamps, that he was the sole proprietor of the newspaper—*The Dublin Evening Post*.

Mr. *Ponsonby* cross-examined Sir *Frederick Flood*, as to his having qualified, when Sir *Frederick* said, he had qualified several times, and believed he had qualified, before that he had taken Mr. *Magee's* affidavit.

Mr. *Ponsonby* objected, that as Sir *Frederick* was unable to prove that he had qualified at the time of the taking of the affidavit, that the affidavit ought not to be read, and for this, cited the case of the King and Nugent, tried at a Commission of Oyer and Terminer, before Lord Chief Justice *Paterfon*, and Mr. *Toler*, now Solicitor General.

The Court over-ruled the objection, and the affidavit was read.

Mr. *Charles Pigot*, assistant Register of newspapers and pamphlets, examined by Mr. *Ball*, proved, that the newspaper entitled, *The Dublin Evening Post*, of the 28th of May, 1790, was delivered

livered into the Stamp-Office by a woman of the name of *Amelia Freel*, who had for several years past been accustomed to supply that office with newspapers from the defendant *John Magee*.

He then produced in Court the Newspaper called *The Dublin Evening Post* of May 28th, 1789, containing the Poem mentioned in the Plaintiff's declaration.

Mr. *Ponsonby*, Counsel for the Defendant objected to the admissibility of that evidence, as the abovementioned *Amelia Freel*, was not produced in Court, there might be 5000 *John Magee's*.

The Court answered, they would let that go to the consideration of the Jury.

Counsellor Walker, objected to the circumstance of *Amelia Freel*, not being produced in Court, her evidence, he said, was necessary to prove the identity of the papers, as the same printed by the Defendant, and delivered to the Register; her evidence was easily to be procured by the Plaintiff, as appeared from the declaration of *Charles Pigot*; and Plaintiff by withdrawing her, did not put the Court in possession of the best proofs possible; he was therefore guilty of a suppression of evidence, and consequently not entitled to a verdict.

The Court observed, that *Amelia Freel* had been proved to have been in the habits of delivering those Papers from Mr. *Magee's* Printing-Office, for the sole purpose of depositing them in the Stamp-Office, to be produced when called for, as authentic records.

Counsellor Geo. J. Browne, for the Plaintiff, then prosecuted to read a Poem stated in the declaration. He was asked by Mr. *Ponsonby*, if he was about to read it, as the fact stated in his declaration? and was answered in the affirmative. Having read the Poem, the Counsel for the Plaintiff said they

should go into the evidence of subsequent publications in *The Dublin Evening Post*, to shew the *quo animo*—the malicious intent of the defendant.

Counsellor O'Neill, for the defendant, objected to the Plaintiff's going into any evidence of subsequent publications in the paper aforesaid, on the ground, that the Plaintiff was not at liberty, to go into evidence of subsequent publications, by way of aggravation; for if the Poem published in the paper of the 28th of May be a libel, the Plaintiff may recover upon that libel.—In the case of libellous words spoken, and such words are set out in a Plaintiff's declaration, if a Plaintiff recovers upon any thing, he must recover upon what is set out in the declaration.—The Plaintiff is not at liberty to give in evidence other words, because those other words might have influence upon the minds of a Jury, in giving damages on the words inserted in the Plaintiff's declaration, and because it was impossible to say what effect those other might have on the minds of a jury. Another maxim in law was—that no man could be sued twice for the same words; here it was evident that the subsequent matters attempted to be adduced in evidence, were designed to form in the minds of the Jury a part of the ground for a claim of damages; and though the Jury should be inclined now to give heavy damages in consideration of this evidence, the Plaintiff would still have a right to bring his action separately, on every one of the paragraphs, and the Defendant could not be allowed to plead in alleviation—the former damages being obtained on the very same ground.

The Court over-ruled those objections and cited several cases, particularly one from *Espinasse's Cases of Nisi Prius*, and proved, the general practice of the Courts, in numberless instances, that such subsequent matter might be adduced, though
not

not mentioned in the declaration, to shew the intent of malice.

Mr. *Ponsonby* said, as the Court had thought proper to over-rule his objections, he would take a bill of exceptions, and reserve the cause to be solemnly argued.

The Court then proceeded to hear the evidence on the part of the Plaintiff.

Mr. Robert Hitchcock, *sworn—examined by the Hon. Counsellor S. Butler.*

Q. What is your situation in the Theatre?

A. I was formerly Prompter, and since Deputy Manager.

What time did you come first to Mr. *Daly* as his Prompter?

In *October*, 1781.

What situation did you find the Irish stage then in?

Just beginning to emerge from a state of wretchedness and poverty.

To whom was this change for the better to be attributed?

To the indefatigable exertions of Mr. *Daly*.

What was the character of the Irish stage when you engaged with Mr. *Daly*?

That it had for many years been sunk so low, that it was almost impossible to retrieve it, and that though Mr. *Daly* had paid every one, during the winter he had opened, yet he would be like other Managers, and involve every person that came to him in ruin,

How did you imagine the stage proceeded, from the time of your joining Mr. *Daly*?

In a regular progressive state—it gradually rose from the wretchedness Mr. *Daly* found it in:—By his unremitting attention it began to gain strength, stability and credit,

What

What was your opinion of it, in the year, 1785?

That it was much improved since 1781.

What opinion did you form of 1786?

That it was better than 1785—in like manner 1787 was better than the preceeding years.

What was your opinion of 1788?

That it was still improving.

What was your opinion of the Irish stage, a few months before the appearance of Mr. Magee's publications?

That the Theatre had at length attained such a degree of respectability, firmness, and credit, it was almost impossible for any accident to shake it.

To whom should this visible alteration be attributed?

To the unwearied industry, and persevering attention of Mr. *Daly*.

How were the receipts of the Theatre, the season 1789, previous to those paragraphs?

Superior to any I had ever known in Ireland.

What was your opinion of the future prospects of the stage in the months of *January, February, March, April and May, 1789*?

That after surmounting almost every difficulty, the time was approaching that would at length recompense the Manager for all his toil and trouble.

Did you perceive any alteration after the publication of these paragraphs?

A very visible one.—Men's minds began to be influenced against Mr. *Daly*;—riots and disturbances were almost every night in the upper gallery of the Theatre; people were terrified from going to the play and the receipts lessened amazingly.

Did

Did you ever hear Mr. *Daly*'s name mentioned in consequence of Mr. *Magee*'s publications?

Yes—in almost every company I went into.

On your return to town in *November*, 1789, at the opening of the Theatre, what was your opinion of its future prospects?

That though Mr. *Daly* had sustained much in his character and property, yet I was in hopes it would die away, and the Theatre flourish as usual.

And were your expectations answered?

Quite the contrary; we were entirely deserted by the public.

What did you impute that to?

The appearance of those publications.

Do you recollect seeing the Poem in that newspaper.—*The Dublin Evening Post*, of May 28th, 1789?

Yes.

Did you read it?

I did.

Who do you think is meant by *Young Roscius*?

Mr. *Daly*, most undoubtedly.

Cross-examined by Counsellor A. Browne.

Mr. *Hitchcock*, you have written a History of the Irish Stage?

I have Sir.

You are collecting materials for another volume?

I have been, Sir.

You say that when you came first to Mr. *Daly*, in 1781. That the Irish stage was greatly reduced. To what cause was that owing?

It is impossible for me to ascertain, I only just then came to the kingdom.

What do you think were the probable causes?

I believe they might proceed from wrong management, and bad performers.

Who

Who was the Manager before Mr. *Daly*?

Mr. *Ryder*, I believe.

At that time was there any abuse thrown out against Mr. *Ryder*, as Manager?

I never heard—I was in England.

You say the stage successively and regularly improved under Mr. *Daly*'s management;—pray do you think he never had any bad actors, or that there has been any bad management?

It is impossible to find perfection in human nature.

I ask again, do you think there has been any bad management, or bad actors since you came to Mr. *Daly*?

Undoubtedly, in so large a portion of time, there must be both, not only in Dublin, but in London, and every other Theatre in the world.

You say, the receipts of the Theatre increased every year progressively?

I do.

Yet you allow there were sometimes bad management, and bad performers?

The merit of performers vary so much in the minds of the public, that it is not possible for me to ascertain the exact standard.

If those paragraphs had never been published, would not the Theatre be sometimes less frequented than others?

It is impossible for me to speak to what never happened.

Whether do you think those publications only occasioned the Theatre to be so thinly attended?

I believe they contributed principally, and in a very eminent degree to it.

Do you believe *Astley*'s performances lessened the receipts of the Theatre?

I cannot take upon me to say they did.

Was

Was your salary regularly paid you?

It was.

You have had eminent performers engaged since those publications appeared.

Yes.

Was not Miss *Farren* an eminent performer?

Yes.

Those publications did not prevent her from coming over from England?

Miss *Farren* was engaged previous to those publications, and was on her journey about the time the Poem made its appearance.

You had good houses when she performed?

We had—that was before those paragraphs began to operate.

You say the receipts of the Theatre increased in 1789, more than any time before; will you take it upon you to say, that the publication of that Poem you looked at, was the sole cause of the thinness of the houses afterwards?

I believe it not possible for any human being to say that precisely. I sincerely believe, that the visible alteration was owing to that, and the subsequent paragraphs?

Question from a Juror.

Have those publications been the sole cause of the thinness of the houses, or have *Astley's* performances been the cause?

When the public mind is prejudiced against a Manager, it produces effects which otherwise could not have happened.

Mr. Charles Pigot called again.

Proved *The Dublin Evening Post* of June 20, 22, July 16, 18, 30, August 4, 6, 8, 11, 22, 25, 27, 29, September 1, October 6, 13, 25, 31, November 12 and 15.

Counsel

Counsel for Plaintiff.

My Lord, and Gentlemen of the Jury, we shall now produce 3 letters written by Mr. Magee; and prove his hand writing.

Mr. Laurence Fay sworn.

The aforesaid three letters were severally handed to the witness, who had been accustomed to Mr. Magee's hand writing. He proved them to be written by Mr. Magee.

The following Letters were read in Court:—The first, from the Defendant to Mrs. Daly, when the Plaintiff was absent in England, containing these words:

“ Magee, of the Arms of Ireland, presents his
 “ Compliments to *Daly* the Player—alias *Barsanti's*
 “ *Cara Sposa*—begs he will oblige him—and that
 “ infinitely, by affixing in his Cabinet the por-
 “ trait of the most infernal ruffian yet unhanged—
 “ except the murderer of the honest marker.
 “ Fiat Dungeon.”

The second Letter to Mrs. Esten, an actress in Mr. Daly's Company then at Cork, dated August 27, 1789.

“ Mrs. Esten—on the immediate receipt, fly to
 “ Mr. Edwards, Bookseller, Cork, I have in-
 “ closed him for your use, a Draft on London for
 “ 20 Guineas—Fly! fly!—I know you were ar-
 “ rested by a ruffian in an uniform.—On Friday
 “ last, at Dinner—I heard of the outrage—I
 “ instantly flew to the Bailiff's Lock-up-house—to
 “ the Marine Hotel, there I learned you were
 “ forced to Cork—I know how you have been
 “ used by that villain, the ruffian—*Daly*—Fly!
 “ fly!—I leave this for London the 1st September,
 “ leave

“ leave address at James Woodmason’s, Leaden-
“ hall-street, London. Your’s,

To Mrs. Eften, Cork.

J. Magee.”

The third Letter.

“ Madam,

“ I know your situation—believe me, I feel for
“ a woman of virtue in distress—I well know into
“ what a dreadful state of infamy and horror,
“ that ruffian *Daly*, has precipitated a woman,
“ who on the stage commanded my admiration—
“ in the walk of private life, not less compelled
“ my respect; at five o’clock this day I heard of
“ your being arrested at the Packet-house—I con-
“ ceived the motive—it had my commendation,
“ and therefore instantly, tho’ at table with the
“ ladies, posted to the bailiff’s house, in whose
“ custody I lately was, to find the oppressed cap-
“ tive—to rescue her from ruin—to give her a
“ bed—to offer her the protection of the roof—
“ of the habitation of *One of the Men of Ireland*.
“ By this time you must have reached Cork—I
“ well know the compulsions under which you
“ now act—I send a Draft at sight for 20 Guineas
“ under the expectation you will on the receipt
“ quit Cork. My friend Mr. Edwards delivers
“ this, and will be happy to render you any ser-
“ vice—I leave this for England, September 8,
“ if you please, leave address at James Wood-
“ mason’s, Esq. Leaden-hall-street, for

J. Magee,

“ *One of the Men of Ireland.*

“ To Mrs. Eften, Cork.”

Right Hon. Lord Donoughmore sworn.

Proved a bond entered into before him,
when one of the Commissioners of Stamps,
by the Defendant, Mr. Magee, for the payment
D of

of the duty and advertisements; and proved an affidavit made by the Defendant, that he is the sole Proprietor of the Newspapers, entitled *The Dublin Evening Post*, and *Magee's Weekly Packet*.

Mr. Hitchcock called again and examined.

What was the situation of the Theatre, in *May*, 1788?

Flourishing very much at that time.

In what situation was the Theatre, in *November*, 1789?

Infinitely worse.

To what circumstances do you think was that change in the Theatre owing

Principally to the various publications which successively appeared in *The Dublin Evening Post*, and *Magee's Weekly Packet*.

The houses were very thin in *November*, 1789, and the following months.

Yes, much worse than I had ever remembered.

Am I to understand from you, that the cause of the decline of the public to attend the performances at the Theatre, was owing to these publications?

In my opinion, that was the cause—I know of no other.

Question from the Court.

What reason can you assign for the thinness of the houses after the month of *November*, 1789?

My Lord, the public were prejudiced in a very great degree against *Mr. Daly*, by the publication of those paragraphs. They were the constant subject of conversation in various companies where I was present—it was the general opinion that they injured the Theatre—and indeed the Theatre was never better attended in my time, than the season previous to these publications.

Pray

Pray what effect did you observe these paragraphs to have upon Mr. *Daly*?

A very visible one both in body and mind—I never saw a man more affected; the agitation of his mind prevented him from attending his business, and his most material concerns were often neglected from these motives.

I solemnly declare, I have not the least personal enmity, pique, or prejudice, against Mr. *Magee*; on the contrary, I have every wish to serve him.

Counsel for the Defendant. We have not the least objection to the credit of the witness.

Cross-examined by Counsellor Ponsonby.

You attended the business of the Theatre from 1781 to March 1790?

I did.

Do you mean to say the receipts of the Theatre, from November 1789 to March 1790, were much worse than the season before the last?

They were worse by many degrees—that is Mr. *Daly's* houses or stock nights were infinitely worse; and as a further proof—the benefits which immediately ensued, were upon an average, better than I ever remembered.

How much less were the receipts?

I cannot take upon me to say exactly; there is another person, the Treasurer, who can give you every information on that point.

Did Mr. *King* perform at the Theatre the season before the last?

He did.

When did he begin to perform?

My present recollection will not serve me to ascertain that minutely.

You are deputy Manager and cannot ascertain when Mr. *King* began to perform?

In the present moment I cannot exactly recollect

left what month; I believe the beginning of the season 1788.

Did Mr. *King* perform on benefit nights?

Never, I believe, except for the Manager's benefit.

Was he here the last season?

He was not.

Was there any actor of equal reputation who performed in the course of the last season?

I do not think that a fair question; public opinion varies so much, it is impossible for me to answer upon oath respecting the merits of performers.

Was there any person equally productive to the Theatre as Mr. *King*?

There was not.

Mr. *King* was a capital performer?

He was.

What salary did Mr. *Daly* give Mr. *King*?

The profits after a certain sum was in the house, were divided—I never saw the agreement between Mr. *Daly* and Mr. *King*, but to the best of my knowledge, the profits, after the sum of 60*l.* was in the house, were divided.

During the last season who had as beneficial an agreement for himself as Mr. *King* had?

That I think is not a fair question.

Was Mrs. *Kennedy* of as equal service to the Theatre as Mr. *King*?

Mrs. *Kennedy* was certainly looked upon as a very capital actress, and held one of the first situations in London—she was one of the best performers that could be got. But for those paragraphs Mr. *Daly* might have engaged other eminent performers in England.

When did Mrs. *Kennedy* begin to perform?

In the beginning of the winter season 1789.

Her

Her agreement was for a certain sum with Mr. *Daly*—how much?

Five hundred pounds.

Did Miss *Farren* perform the winter before last?

No she performed in the month of *June* and *July*, 1789.

This libel, as it is called, was published the 28th of *May*, 1789.

Yes; but there were subsequent publications.

Did Miss *Farren* bring full houses?

Most certainly.

Did Mrs. *Abington* bring full houses?

Yes, she did.

Mr. *Lewis* performs at the present time, does not he bring full houses?

Very full.

Court. I object to such questions as may affect personal character—it may injure performers in the minds of the public, which I am sure you do not wish.

Did not *Astley* perform at his Theatre in Peter-street last season?

He did.

His Theatre was very much resorted to?

I have heard so, and do believe it.

Do you read *The Freeman's Journal*?

Sometimes.

Did you ever see certain paragraphs against Mr. *Astley*?

To the best of my recollection I did see one paragraph.

Did not Mr. *Daly* file a bill for an injunction to prevent Mr. *Astley* from performing at all?

I do not know.

Do you know whether there were any proceedings at law?

Whether there were or not, I do not know.

Do

Do you know Mrs. *Crouch*?

Yes.

Did she perform at the Theatre any time last summer?

She did.

Did not Mr. *Kelly* perform at the same time?

He did.

Were not Miss *Farren*, Mrs. *Crouch*, and Mr. *Kelly*, when they performed at the Theatre, much liked by the public?

They were most deservedly liked.

The Theatre was very much resorted to when they performed?

It was in general well attended on those nights.

Counsel for Plaintiff.

Whether some of the performers of the London Theatre did not refuse to come over, unless they were secured in a certain sum each?

I did hear so.

What was the reason Mrs. *Kennedy*, would have a certain sum, instead of a salary or profits?

These publications in *The Dublin Evening Post*, I understood, made such an impression on her, that she would not venture over without a certainty.

Mr. William O'Reilly comedian sworn—examined by
Counsellor Burston.

Do you know Mr. *Daly*, Manager of the Theatre Royal?

Yes.

Are you employed as a performer at his Theatre?

Yes.

Was the Theatre well attended last winter?

It was not, unless on benefit nights.

Can

Can you tell what cause this was to be attributed to?

I join the public opinion, that it was owing to the many publications in *The Dublin Evening Post*, against Mr. *Daly*. I have heard in many companies that cause assigned, for the Theatre's not being frequented. I have heard it in public, that such a villain should not be encouraged; I have even heard my own friends say so.

Did those persons assign any reason for saying so?

Yes, that it was from the character given of him in those publications—that such a villain ought not to be encouraged. This was what almost every body said, it was the general opinion. Those papers were at that time so much fought after, that I have myself offered sixpence for one, on the night of publication, and could not get it.

Question from the Court.

By virtue of your oath, do you attribute those impressions on the public mind, to those paragraphs, or publications in those Newspapers?

I do my Lord. And several times, when in company, talking about the bad business, my friends have said to me—dont fear for your own benefit, but as to that villain *Daly*, he ought not to be encouraged.

Cross-Examination

Counsel for Defendant. Have you read this Poem?

Never, but I have heard it read this day.

You recollect perhaps, what you have heard read this day?

I do recollect a good deal of it.

As a fair and conscientious man, do you believe that by *Roscius* in this Poem, is meant Mr. *Daly*.

Upon

Upon my oath that is my opinion.

You are a man of good understanding; do you believe there is any thing in this Poem imputable to Mr. *Daly*?

Upon my oath I believe some part of this Poem meant Mr. *Daly*.

Was you a member of the Theatre, in the winter of 1788?

I was.

Was you in the winter preceding?

I was.

When Mr. *King* performed, were the houses full?

When he did not play the houses were not near so full.

Then there was a difference in the appearance of the Theatre?

There was.

Mr. *King* was not here the last season?

No he was not.

Is Mr. *Lewis* an actor of equal estimation?

I cannot answer that question.

Is there an actress equal to Mrs. *Abington*, who in the language of the Theatre, could draw houses?

There is always a variety of opinions as to the merits of performers.

Court. Suppose you ask the question this way, whether before Mr. *Lewis* or Mrs. *Abington* came here the last time, was there any eminent performer, or person likely to draw money?

My Lord, The performances of the Theatre were admirably well done, by those considered by the public as eminent actors.

Counsel for Defendant. Was there any who could class with Mr. *King* or Mrs. *Abington*?

I cannot tell.

Mrs. *Kennedy* performed here last winter?

Yes.

How

How long have you been with Mr. *Daly*?

These seven years.

In what estimation is Mr. *Daly* held in by the English actors,

I have not been in England to know—the English actors who came over here always gave him the best of characters; and said he paid them punctually, and that they would speak well of him on their return.

Did you never hear any English actor speak ill of him?

Yes I did—one who was much in Mr. *Daly*'s debt, who broke his articles and ran away; when Mr. *Daly* afterwards arrested him in England, to endeavour to recover his money, I did hear that he gave Mr. *Daly* a bad character.

Upon your oath, whether you believe that previous to the *May*, 1789, the houses were better filled?

As an unprejudiced man, I declare, that before *May*, 1789, the Theatre was much better frequented.

Was there performances at *Astley's* Theatre last winter?

Yes.

Do you think his exhibitions drew much from Mr. *Daly's* Theatre?

Perhaps they might.

Was not he very popular?

His son was.

Did you hear that Mr. *Daly* applied to the Court of Chancery to obtain an injunction to prevent *Astley* from exhibiting?

I never did hear of any proceedings at law.

Were not *Astley's* houses very full?

Several of his performers came and told me that they had better houses than we had—that

E

they

they were better performers than we were, and were better liked by the public.

Upon your oath do you believe the bad business of Mr. *Daly* to have arisen from the publication of this Poem or not?

Upon my oath, I believe the publication of this Poem, and the many paragraphs afterwards, were the cause of it.

Court. Did you ever read in any other newspaper except the *The Dublin Evening Post*, any other paragraph reflecting upon Mr. *Daly*?

None that I could recollect, my Lord. I have in other papers read criticisms upon the performances, where one was praised, and another perhaps censured, but nothing ever pointed at Mr. *Daly*.

Mr. Mathew Mara sworn—examined by Counsellor Egan.

Pray Mr. *Mara*, had you any difference with Mr. *Daly*?

I had.

What was the consequence of it?

I was removed from my situation of Boxkeeper.

Do you recollect having any conversation with Mr. *Magee*, in the months of June and July?

I do.

What was it?

He called on me at my house in Cope-street, and said he would hang Mr. *Daly* for the murder of the Billiard Marker, and asked me if I could give him any information respecting the murder of the said Billiard Marker.

What answer did you make?

I told him I could not.

Why did Mr. *Magee* apply to you on such a business?

I conclude

I conclude it was, that he knew I was at variance with Mr. *Daly*, in consequence of being dismissed from my situation; and therefore he might think me a proper subject to work upon for his purpose.

Had you any other conversation with Mr. *Magee*?

I had.

Where was it?

I saw him one day in a coach on Donnybrook-road, he put his head out of the coach, and called to me, he then made me come into the coach, and drove me round Stephens'-green, during that time, declared again that he would hang Mr. *Daly* for the murder of the Billiard Marker; and again asked me for information on the subject.

What answer did you make then?

That I could give him no information as to such a business.

Pray had you at any other time any more conversation with Mr. *John Magee*?

I had:

Where was the third time?

I was going to see the *Laugh Braugh Pleashura* at Dunleary, and was met by Mr. *Magee* on the road, who again said the same words—that he would hang Mr. *Daly* for the murder of the said Billiard Marker, and requested me to give him some information respecting the said alledged murder.

What answer did you make to him?

Mr. *Magee*, said I, if that's the point you want to establish, you will be foiled in it, for, notwithstanding I am at variance with Mr. *Daly* at present, my wife and I, can both prove on oath, if required, that the said Billiard Marker dined with us six weeks after the report of the said murder, and was in as good health and spirits as we had known him for twelve years before.

Did

Did you tell Mr. *Magee* this at the first time you had the conversation with him?

No, it was at the last conversation I had with him.

What day of the month was this?

It was the grand gala at Dunleary, the beginning of August.

Council for Plaintiff.

Counsellor Egan.—My Lord and Gentlemen of the Jury, please to take notice the publications relative to the murder of the Marker, were *August* 25th, 1789, and the many subsequent paragraphs that appeared afterwards, must in a peculiar manner shew the malice of the defendant.

Cross-examined.

Are you acquainted with the receipts of the Theatre?

No, I assist to take the accounts at night, that is all.

Mr. John Kennedy sworn.

Was you Treasurer of the Theatre?

I was.

When was you Treasurer?

From 1780 to 1788.

Did you hear of these publications in *The Dublin Evening Post*?

Yes, I heard of them constantly in England, where I was at the time they were published.

Were you ever witness to any riots at the Theatre?

I was very often.—The people used to cry out from the gallery—A clap for *Magee*!—*The Man of Ireland*!—A groan for the *Sham*!—A groan for the *Dasher*! Out with the lights! Out with the lights! I have frequently, at the risque of my life, attempted

tempted to stop those riots.—Shortly after the publication of those paragraphs, the moment the doors were open, a number of disorderly ill-looking fellows used to come into the gallery, armed with bludgeons, pistols and old swords.

Who did you imagine they meant by the *Man of Ireland*?

Mr. Magee most undoubtedly.

Who did you suppose they meant by the *Sham*?

Mr. Francis Higgins.

Who did you think they meant by the *Daffer*?

Mr. Daly.

Did the receipts of the house increase or decrease any time before these publications?

From 1780 to 1789, previous to those publications, they increased; after that period they decreased.

You know Mr. Ryder very well, what was he engaged for?

He was engaged for 20l. per night, and sometimes there was not so much in the house.

Pray was the house dismissed at any time that Mr. Ryder was to have played?

Yes, it happened twice, for want of company.

What did you attribute that to.

To the disturbances in the Theatre, occasioned by those paragraphs. The company used often to withdraw their money, and go away; so much were they afraid of the riots mentioned in these papers.

Did you, when in England, find any difficulty in making engagements with performers to come over here?

I did—I had been in the habits of making engagements in England for Mr. Daly for several years before, but never experienced any difficulty till the publication of this poem and the paragraphs. Numbers of performers whom I afterwards

wards applied to, told me they were afraid to come over unless secured. Others, whom I was in treaty with, dropped all thoughts of coming, as they said they were deterred from coming to the Dublin Theatre, by the fear of being attacked by those papers, and they all imagined from those representations, that the Irish stage was so reduced that it would be wrong to venture.

Did any of them engage with you ?

Very few ; those that did, demanded a greater salary than they otherwise would have done.

Cross-examined.

You know Mr. *Handy Pemberton* ?

I never saw him but once.

When Miss *Farren* came over, she was considered to bring good houses ?

Yes.

There were riots at that time, did she suffer any bodily injury ?

No, but she was often greatly terrified and alarmed, and has repeatedly told me in her dressing-room, that she was afraid to go upon the stage, and that if she had had any idea of such disturbances, she would not have come over for ten times the sum.

Mr. James Heron sworn.

Was you in the employment of Mr. *Daly* ?

I was for some years, as assistant Treasurer, till about the 20th of *January* last.

Are you now in Mr. *Daly's* employment ?

No.

When did you leave him ?

The 20th of *January* last.

Were the receipts of the Theatre paid into your hands ?

They were, for the last three years.

Did they encrease or decrease during that time ?

They

They encreased till the publication of those paragraphs.

Can you recollect the difference in the receipts of the winter before, and after the publication of the Poem.

When I left Mr. *Daly*, and closed my accounts, on the 20th of *January* last, there was a deficiency on the face of my books of 1755*l.* less in the receipts of the Theatre since it opened, in *November*, 1789—than there was for the same time the preceding year.

Do you attribute this very great deficiency or difference, of 1755*l.* in the receipts of *November*, *December*, and *January* last—to the influence of those paragraphs on the minds of the public?

I have every reason to think so.

Cross-examined.

Was there any principal performer, such as Mrs. *Siddons*, the last season, beginning 1789?

Not that I know of.

From *November*, 1789, to *January* 20, 1790, was there no performer of eminence?

I really cannot tell—there were many excellent performers.

What time did Mr. *Astley* get his patent?

I do not know.

Had not Mr. *Astley* performances at his Theatre, from *November*, 1789, to *January* 20, 1790?

He was performing the year before—but not with the same success?

Question from a Juror.

What was the reason, do you think of the thinness of the audiences, in 1789?

Upon my oath, I believe it was owing to the publications of Mr. *Magee*; I heard many people declare, and say they would not frequent the Theatre

Theatre while Mr. *Daly* was Manager, in consequence of the very bad character given of him by Mr. *Magee*, in his newspapers.

You made up the account of the last season?

I did to the 20th *January*, when there was a deficiency 1755*l.* to what there was at the same period the preceding year.

Charles Pigot again called.

Proved that the newspapers entitled *Magee's Weekly Packet*, produced in court, were those delivered into the Stamp-Office by *Amelia Freel*, who usually supplied the Stamp-Office with newspapers.

Mr. William Dawson sworn—examined by the Hon. Counsellor Butler.

Were you employed by Mr. *Daly*, to go to London and other places to engage performers?

I was.

Did you meet with any thing uncommon or unusual in your last visits to England?

Yes, almost every performer of eminence asked me enormous sums for running the risque of being libelled by Mr. *Magee*:—Mrs. *Crawford* would not accept of an Hundred Pounds I offered her in advance, and asked me if I wanted to sacrifice her, by letting her be abused in Mr. *Magee's* newspapers; she declared she could not nor would not venture over whilst those publications were suffered: I likewise experienced many disappointments in engagements which I had depending with other performers, and with painters, dancers, and carpenters, who were all afraid to venture over to Dublin, from the character given of Mr. *Daly* and the Theatre, in *Magee's Evening Post*: Mr. *Bowden* also, would not come on his former terms, but raised them considerably.

Do

Do you think Mr. *Daly's* credit was hurt in England by those publications?

I am certain it was most materially, and those facts I have now related, confirm it beyond a doubt.

Do you think the receipts of the Theatre hurt by Mr. *Magee's* publications?

I do; the receipts of the Theatre last winter were much worse than I ever remember.

Are you acquainted in Mr. *Daly's* family?

Yes, Sir, and from my intimacy with Mr. *Daly*, I had many opportunities of seeing him often rendered almost incapable of attending to the business of the Theatre, or even his domestic affairs, by the vexation and trouble of mind he was thrown into by the abusive, and scandalous paragraphs published against him and his family; in short, he was many times by the repetition and effect of these publications of Mr. *Magee*, almost reduced to a state of distraction.

Did you know of any riots that happened at the Theatre last summer and last winter?

Yes; after the publication of those paragraphs, I was an eye and ear witness to many riots and tumults in the upper gallery. I am clearly of opinion that there were people sent into the Theatre to disturb the audience, and interrupt the performance. I have often ventured into the gallery, at extreme hazard, to quell those riots, and take out the offending persons, who, I verily believe, were hired on purpose to breed disturbances; in hopes of ruining the Theatre.

Question from the Court.

Can you be satisfied of this, so as to declare it on oath?

My Lord, as far as their declarations went, I can say so. Many people declared, that they
F wished

wished to frequent the Theatre, but were prevented by the apprehensions of those disturbances; not being willing to endanger their safety, which from *The Dublin Evening Post* they were taught to expect; therefore, Mr. *Daly's* loss must have been very considerable, in consequence of those disturbances.

Have you reason to attribute these riots to this publication?

Every reason in the world. The Theatre before was peaceable and well-frequented;—after they appeared, numbers said, that Mr. *Daly's* Theatre ought not to be opened, as those newspapers of Mr. *Magee* held him out as a rogue, a cheat, and murderer.

Do you believe that the word *Dasher* was meant for Mr. *Daly*?

Yes—the rioters in the gallery would call out, a groan for the *Sham*, a groan for the *Dasher*, a clap for the *Man of Ireland*, out with the lights!

Who did you understand was meant by the *Man of Ireland*?

Mr. *Magee* assumed that name in his own publications.

Had you any conversation with Mr. *Ryder* in England, previous to his coming over about Mr. *Daly*?

I had—Mr. *Ryder* told me that he understood Mr. *Daly* was a ruined man, that he was confirmed in this opinion by various accounts received from Ireland, and by the publication of those numerous train of circumstances sent into the world and dispersed by the medium of *The Dublin Evening Post*.

Cross Examination.

I think, Sir, you said, that the mob in the gallery called out, a groan for the *Sham Squire*, a
clap

clap for the *Man of Ireland*, which you apply to Mr. Magee?

I beg your pardon, Sir, I never did—he applied it to himself in his newspapers—I don't know that any body else did.

Well, you said there was a groan for the *Sham Squire*, a clap for the *Man of Ireland*, and a groan for the *Dasher*, which you apply to Mr. Daly. Whom do you consider they meant by the *Sham Squire*?

Mr. Francis Higgins.

Is Mr. Higgins proprietor of any paper?

I do not know.

Is he proprietor of *The Freeman's Journal*?

I have heard so.

Do you believe it?

I cannot believe what I do not know to a certainty, I can only say I have heard so.

Have you read *The Freeman's Journal*?

Some times.

Has there not been the same constant series of re-crimination between Mr. Higgins and Mr. Magee?

I have seen dashes on each side.

Is there not a very particular intimacy between Mr. Daly and Mr. Higgins—Have they not a very great friendship for each other?

Have I a right, my Lord, to answer that question?

Court. No; I must object to that question—I think it wrong to endeavour to involve this cause in any party or prejudice—besides I must object to a cross-examination which leads to introduce other persons not in this cause, and connect them in the present question.

Counsel for Defendant. Do you believe yourself that there was any particular intimacy between Mr. Daly and Mr. Higgins?

Sir, I know of no particular intimacy between
Mr.

Mr. *Daly* and Mr. *Higgins*, any more than between you and the many gentlemen who are round you.

Court. You have answered very properly and clearly.

There is a friendship between them?

The same sort of friendship that subsists between man and man. No particular friendship.

You still believe there is a friendship?

I have answered you Sir.

Court, to the Defendant's Counsel.

I am willing to give you as much room as possible, suppose the *The Freeman's Journal* abused Mr. *Magee*, do you urge this as a mark of spleen against Mr. *Daly*, or in extenuation of the defendant?

My Lord, we only wish to shew there has been abuse on both sides.

Court. But this has nothing to do with the present cause, nothing appears against Mr. *Daly*.

Counsel for Defendant. Have you read this merry poem?

I have read it:—in this merry libel, Mr. *Daly* is called a rogue, a gambler, and many other odious appellations.

Do you believe that in consequence of the publication of the poem, Mr. *Daly* has been injured?

Yes, because he is there called a gambler, and as selling his person for money. I do believe that libel has done Mr. *Daly* great injury.

Do you believe that a great many in the gallery ever heard of this poem?

The gallery is a very small one, but when the riots were there, amongst other inflammatory expressions they called Mr. *Daly* a carrier pigeon.

I never

I never heard that attributed to Mr. *Daly* before the publication of this libel.

Counsel for the Plaintiff.

My Lord, and Gentlemen of the Jury, we rest the case on the part of the plaintiff.

Charles O'Neil, Esq.—*Counsel for the Defendant,*

Then rose, and in a very forcible manner, endeavoured to impress the idea of his Client's not being obliged to answer any publication, but that stated in the declaration, and which he contended had no more reference to a libel, than the ballad of Chevy Chase had. He called the fragment on which the declaration was founded, a harmless merry Poem. As to libels the Jury were the judges of fact, they were also, he said, judges of law, if they would take it upon them, notwithstanding what had been asserted to the contrary. That he could take upon him to say, there was not one inuendo which could be applied to the Plaintiff. He did think that the Defendant had made an infamous use of his paper, but then there had been as great abuse thrown out against him in another paper.

Counsellor O'Neil then proceeded to call evidence on the part of the Defendant.

Mr. William Gilbert, sworn.

You are father-in-law to Mr. *Magee*?

I am.

Pray are you of opinion, that Mr. *Magee* has at any time before or after the publication of this Poem, been any way unsettled in his mind?

Yes, I do think so.

From what time?

About

About the month of *March*, 1789, when Mrs. *Magee* died, he appeared to be unsettled as to the state of his mind. He seemed to neglect his business, and left it to the care of clerks and shopkeepers, who did not pay proper attention to his affairs, by which means he sustained considerable loss.

How soon after that was he taken into confinement?

Some time in the beginning of *June*, 1789, he was taken and carried to a Bailiff's house in High-street, to which he afterwards gave bail.

What effect had this upon his mind?

So much as to incapacitate him from attending any kind of business, which he was obliged to commit to the care of his clerks.

If the people who conducted his business had a mind, might not they have put any thing into his paper without his knowledge?

Yes—he had not it in his power to prevent them.—In *November* he was admitted to bail, in the same month he was again taken up, and committed a close prisoner in the New-Prison till the *December* following, when he was bailed;—he was then taken up at the suit of Mr. *Daly* and Mr. *Higgins*, in order to give bail at bar.

Do you know whether Mr. *Daly* could have brought on this trial before?

He had been served with notice twice; he had notice of trial last *February*.

What effect had his confinement upon his mind?

A very severe effect upon his mind and constitution.

What effect had it upon his business?

From very great business which he had in the Lottery line, he had very little business; particularly the last Lottery, from not being able to pay attention to it.

His

His clerks you think imposed upon him?

They certainly did.

It is said Mr. *Magee* abused Mr. *Daly*, do you know of any recrimination?

I cannot say with respect to Mr. *Daly*, but I can as to the *Freeman's Journal*.

Do you remember to have seen any abuse in the *Freeman's Journal*?

Yes, I have seen abuse of Mr. *Magee* in that paper.

Court. If you bring the charge to Mr. *Daly*, you make it evidence?

My Lord, I can't say any thing as to that.

Cross-examined by Counsellor Flemming.

You say Mr. *Magee* has been confined in the New-Prison, was it at the suit of Mr. *Daly*?

It was.

Will you take upon you to say upon your oath, that Mr. *Magee* is at present in confinement, at the suit of Mr. *Daly*.

I will.

My Lord, and Gentlemen of the Jury, the evidence says, he will declare upon oath, that Mr. *Magee* is confined at the suit of Mr. *Daly*!

Court. Hold, I think it my duty to set the evidence right; Mr. *Gilbert*, you are in a very great error. Mr. *Magee* is at present, and has been for some time confined for a contempt of this Court, and if he was free from the charge now alledged against him, he must return to the New Prison till the sentence pronounced against him for that contempt is compleated.

Pray did not Mr. *Magee* advertise, that he could give bail to the amount of half a million of money?

I do not recollect seeing any such advertisement.

Do you believe there was any such advertisement.

I do not believe there was any such advertisement.

Have

Have you ever read any paragraphs in *The Dublin Evening Post*, reflecting on the character of Mr. Daly?

No, I never did.

Did you ever hear of any such paragraphs?

No, I never did.

Do you really on your oath, believe there were not any paragraphs in *The Dublin Evening Post*, reprobating Mr. Daly in the most abusive terms?

I do not know that there ever was any thing to traduce the character of Mr. Daly in *The Dublin Evening Post*.

Pray, do not you believe, that if those libellous publications had not appeared in his papers, he might have remained unmolested in his attentions to his business?

No, I do not.

My Lord, and Gentlemen of the Jury—after the paragraphs you have heard read, and which the witness was present at; he positively swears there was not any paragraph reflecting on Mr. Daly in *The Dublin Evening Post*! after such a declaration, I do not think it necessary to ask him any further questions.

George Ponsonby, Esq. *Counsel for the Defendant,*

Then rose, and with great force and ingenuity, defended the cause of his client;—with extraordinary ability he commented on the libel set forth in the declaration, which he read line by line, with the inuendos in explanation;—these he endeavoured to place in the most ludicrous point of view, in order to establish the harmlessness of the Poem on which the damages were laid. He observed to the Jury that it was absolutely necessary for them to believe those inuendos applied to Mr. Daly. He ridiculed the image of Cupid being introduced as the messenger, that by the Cam-
brian

brian shore could not be meant Great-Britain, as the inuendo explained.—He has seen a number of Manageries, but never had been so fortunate as to meet with a Carrier Pigeon—nor could he comprehend how Wolf Dogs could, as described in the Poem, mount into the air to stop the progress of the Carrier Pigeon—in short, there could be nothing libellous in the Poem.

As to the subsequent publications, which had been given in aggravation, to shew the malice of the Defendant, he had not been able to find a case, except *Esplanasse's Cases*, which could warrant going into evidence on that point—that there had been the evidence of upwards of twenty newspapers gone into, but not one of those newspapers were set out in the declaration.

That no Jury ought to give damages upon the subsequent libels, but upon the Poem set forth in the declaration only ought they to find. That if the Plaintiff thought himself injured by those subsequent publications, he might bring separate actions upon each, or they might be all joined in one action;—then the defendant would know what he had to prepare against, and defend himself accordingly.

He then adverted to the situation of the Defendant, who had been long in confinement, and suffered very considerably; he had been almost deprived of his understanding, his health much impaired, his fortune impoverished, and his business, as Lottery-office-keeper and Printer, greatly neglected, which he supposed would be compensation enough for any matter of this kind, and appealed to the Jury if they were in such a situation, if they would not think so;—that he imagined Mr. *Daly's* best mode would have been, when he found his character attacked, instead of bringing an action, to have resorted to his innocence, his best shield, as the public soon

forget any little reflections which are occasionally thrown out against any man's character.

That tho' evidence had been produced to prove that the receipts of the Theatre were lessened several thousand pounds, yet it could not be proved that such deficiency arose from the publication of this little Poem only, but that they were obliged to have recourse to subsequent publications to prove the damages sustained, which should not be admitted. That Mr. *King* brought good houses, as did Miss *Farren*, Mrs. *Abington*, and Mr. *Lewis*; that whenever good performers appeared there would be good houses, notwithstanding the publications of the 28th of *May*, 1789.

He then with great eloquence addressed the Gentlemen of the Jury, respecting the damages they were to find:—If they did not think the publication of the Poem of the 28th of *May*, 1789, a libel, and if they did not think those inuendos applied to Mr. *Daly*, they could not find any damages:—if they were of opinion that the subsequent publications were libels, they could not bring them into the present case, as they had not been stated in the declaration.

That in measuring what the Plaintiff had suffered, they were to consider the situation of his client, and the injuries he had sustained from confinement, independent of the torrent of abuse thrown out against him in the *Freeman's Journal*, for which he sought no redress; that they had heard all the evidence which had been adduced on the part of the plaintiff—they had also heard one on the part of the Defendant.

That they could give no damages but on account of what was stated in the declaration; therefore, if they thought that in consequence of the Poem published on the 28th of *May*, 1789, the Plaintiff had sustained any injury, in that case only, they

they were to find for the Plaintiff—but if they were satisfied those innuendos were not applicable to Mr. *Daly*, and that he had not sustained those damages laid in the declaration, then they would acquit his client.—He then concluded a very eloquent and elegant speech, of considerable length, which did him great honour, with expressing his being certain they would find a verdict for the Defendant.

John Philpot Curran, Esq. *Counsel for the Plaintiff.*

I am abundantly aware, my Lord and Gentlemen of the Jury, that by attempting to rise at so advanced a period in the evening, (past 8 o'clock) at a time when the Court, Counsel and Jury are alike exhausted, I labour under circumstances of peculiar disadvantage; I feel, however, the subject to be too important, as well in regard to the interests of my client, as the honour of my country, and the safety of our constitution, to suffer any motives of personal consideration to operate against what I owe to the cause of my client, and the justice of this honourable Court.

Gentlemen of the Jury, before I would direct your attention to the wrongs which the Plaintiff has sustained, permit me to say, that it is a very extraordinary, and a very unaccountable conduct in the Defendant, when he has not denied the publication of a defamatory and malicious libel, to combat the introducing of evidence, which has for its object the proof of such defamation, and the establishment of such malice—and I will take the liberty to add, that it is illegal, as well as preposterous, when he has already pleaded the general issue, to come into this honourable Court, and controvert, by his Counsel, every material circumstance which looks towards proving that issue.

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Such a conduct on the part of the Defendant, is as little excuseable in point of reason, as the bold allegation by his Counsel is tenable in point of law:—in truth, if the position attempted to be laid down by them, was sanctioned as law by the adjudication of the Court, only see how mischievous, and absurd would be the consequences!—Either you must acquit the Defendant generally, says the ingenuity of the Lawyer, or you must find the application of every inuendo however frivolous in itself, or however irrelevant to the merits. Why, Gentlemen, a position which is against reason, cannot be agreeable to law, for the maxims of the law are the deductions of our reason. If such arguments were this day to prevail, and the authority of the Court was to lend a sanction to the asseverations of Counsel, trial would be unnecessary, and a verdict impossible: Calumny would, with gigantic strides, stalk over the country with impunity, and the spirit of retributive justice would be evaded. Let the crafty calumniator, discharge the fulness of his vengeance; but after he has accomplished his object, by poisoning the quiet of a man's mind, blasting his honourable name, ruining his property, and alienating his friendships, let him interlard the deadly publication with a few innocent inexplicable inuendos, and if the law really be as it is just now laid down, his Counsel may rise with confidence, in this honourable Court, and say, “Gentlemen of the Jury, either find the inuendos in every particular, or acquit generally my client.” Where in such a case would be the safeguard of integrity, or where the terror to defamation, if the libeller could thus sport with your understandings, or wipe away the dark complexion of his iniquities, under the protection of our laws?

But,

But Gentlemen, the fact is not so, I will assert, fearless of contradiction, that the law is the reverse. I speak under the superintendence and controul of the court, if I mistake the law, I stand before a Judge who knows the law, and will contradict me, if I state any thing to be law, which is not so, let my Client pay the price of my temerity—by you, Gentlemen of the Jury, finding a verdict in favour of the Defendant.

Gentlemen, you have been impannelled as Jurors, for the purpose of trying the issue which has been joined in this case. The issue which you are to try, is a general issue, and the language of the law is, that where there is a general issue, it comprehends not only every averment in the declaration, but also every material and substantial averment necessary to support the Plaintiff's action. I say this, Gentlemen, to answer the assertions of some of the learned counsel for the Defendant. It has been said, if you do not find every inuendo applicable to the plaintiff, that then you ought to find against the Plaintiff. To this I answer, *the law is not so—it is the reverse*

One argument which has been relied upon is, that the cause of the Plaintiff's action must be expressed upon the record, that the Defendant might have notice upon what ground to defend himself upon the issue joined, but in point of law, Gentlemen, whatever evidence is just and proper must go to the Jury, that they may judge of the damage and injury sustained by the plaintiff. *This point I challenge any lawyer to contravene.*

Now, Gentlemen of the Jury, what is the cause of action in this case. The Plaintiff states himself to be a man of unblemished reputation, that he is in a public profession—as Manager of the Theatre Royal, that he has suffered very material damages by a false, scandalous, and *malicious* libel

libel published against him, tending to deprive him of the means of making an honourable and respectable provision for himself and family.—Here the accusation of *malice* is particularly set out upon the record. The Defendant seems to me to have had full and sufficient notice to defend himself. The point was fully in issue, and he was well apprized of every circumstance.

Gentlemen of the Jury, the Defendant has not denied the malevolent purpose of the publication. I need not now go into all the parts of the declaration, many of them are mere words of course, but it does state *most clearly*, the *malicious purposes* of said paragraphs; and perhaps there was as much *malice* as ever entered into the heart of any one man, or that one man could conceive against another. He must have been actuated by the deliberate diabolical purpose of violating every law of society; every tie human and divine. One of the laws of the Decalogue, "written with the finger of Omniscience upon the breast of every honest man, is—" THOU SHALT NOT BEAR FALSE WITNESS AGAINST THY NEIGHBOUR."

One of the charges of the Plaintiff is, that the said John Magee, Printer and Proprietor of *The Dublin Evening Post*, did publish said libel with the purpose of *injuring* the said Richard Daly, as Manager of the Theatre Royal, by holding him out as an infamous cheat, making him appear ridiculous to society, and injuring his credit, by representing him to be in danger of a gaol. The declaration having stated the *malicious* intent of the libel, concludes with the averments, that in consequence of said libel, the Plaintiff has been damaged and injured in his good name and reputation, that those persons with whom he was in the habits of friendship, refused all intercourse with him since the said publications, and that the re-
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ceipts of his Theatre have been materially lessened, and the Theatre has not been so much frequented as it used to be in consequence of the said libel.

Gentlemen of the Jury, give me leave to say, here is a cause of action, and where the reputation of a man is taken away by the publication of a false malicious libel, a Jury will assess damages according to the value of the character lost.

Having proceeded thus far, permit me Gentlemen, to request your attention to one of the most serious and important points that ever came before a Jury. I am to beg you will on the present occasion, divest yourselves of all prepossessions, and calmly and impartially draw the line, the *golden mean*, between the *Liberty* and *Licentiousness* of the the Press. The Defendant himself complains, that he was greatly injured by defamatory publications against him, what then must the Plaintiff have suffered! It is time indeed, Gentlemen, to put a stop to evils which every day cry aloud for redress, to check the growth of that licentiousness, which leaves every honest man in the power of a worse than midnight assassin. It is by such means alone you can secure that invaluable treasure, the Liberty of the Press, the great bulwark of our constitution. For, as the *Freedom of the Press is the great guard of public Liberty*, so ought we be watchful that it is not made an engine of by *wicked and dangerous men*, to subvert and overturn that constitution, which it was designed to cherish and protect.

The *Freedom of the Press* is our best and safest guard, it is the only sure means to preserve to us those inestimable privileges bequeathed by our ancestors. The *Liberty of the Press* is one of the greatest blessings in the hands of an *honest man*; how careful ought we then to be in our endeavours
to

to preserve its purity. Give me leave to tell you, Gentlemen of the Jury, when the Press is degraded, when it becomes the vehicle of calumny and licentiousness, it is your province, it is your duty, as *guardians* of the *Constitution*, to curb its excesses, and lop of its exuberances.

Let it not be said, that a *Jury of Irish Subjects* upon their oaths, would not in a case so plain as this, find a verdict for the Plaintiff. No, Gentlemen, such a conduct would be to hold out encouragement to the libeller. A man who libels another, may justly be considered as an assassin, he is a more public delinquent, than the villain who lifts his *knife* against an *individual*. The wretch who stabs you at the corner of the street, is less dangerous to society, than the *libeller* who disturbs the *peace of a whole community*.

If you wish to extirpate the Liberty of the Press, what more effectual method could be devised, than by giving countenance to its licentiousness, until it became a public nuisance? Suppose this to be the case, what would be the language of our legislature?—Is there a senator who would not rather assent to the total suppression of its liberty, than that it should owe its existence to such monstrous perversion. With justice would they say, better to suppress the Freedom of the Press altogether, than permit the publication of libels, which destroy the *peace*, the *happiness*, the *welfare of society*. If you do not wish to encrease the number of those envenomed shafts of malice, those libels so disgraceful to humanity, put a stop to them in the first instance, your duty to God and man point out the necessity! The honest citizen may then once more lay down in security, and enjoy his peaceful slumbers undisturbed, without the reflection of waking in the morning with the horrors of being held forth in some popular newspaper,
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an innocent victim of unprovoked malice, and diabolical revenge! Ages yet unborn will revere your determination, which secures the dearest and most invaluable blessing of life! *A good name!*

No man of common sense can say, that the inuendos in this Poem do not apply to the Plaintiff, and the evidence in this case have proved, that Mr. Magee was the Printer and Publisher of this libel in the *The Dublin Evening Post*. The fact has been brought home to the Defendant. In this case there is a *general* issue, and it would be ridiculous to say, that a Jury is obliged to find *all* the inuendos in the libel to apply to the Plaintiff. If this was to be admitted, then a libeller would have nothing to do but to introduce some character into a libel, which had no existence, and then because all the inuendos do not apply to the Plaintiff, he could not therefore recover.

The Gentlemen on the other other side have said, "that you are to confine yourselves to the "consideration of the libel set out upon the record."—One answer must be conclusive as to that point, which is, that if the consideration of subsequent publications to shew the malice existing, if the going into the evidence of the subsequent publications should be held to be against the law of the land, after that point has been put into a course of legal investigation; then, Gentlemen, the verdict which you shall give, would be a nullity and set aside. If the Court has erred in point of law, a bill of exceptions may be taken. I appeal to the Court, if what I have said be not law.

Gentlemen of the Jury, you will find your verdict upon the evidence which you have heard this day. It had been said by the Counsel for the Defendant, that he was taken by surprise. I own I was surprised to hear that objection made by his

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learned Counsel. Give me leave to say, that it is confirmed law in *Westminster Hall*, as well as in the *Courts of Ireland*, that in the case of an action for *libellous words*, you may go into *other evidence to prove* the malice. In such a situation, what would you say to the murderer, who, in order to evade the law, would plead—There is but a single wound stated upon the record, which it is averred occasioned the death of the deceased—it is impossible to ascertain this “*With repeated stabs I covered his body with deadly wounds*—then who can say—WHICH brought forth the last groan from the heart of the deceased !!!”

In the present similar case of a murderer of character, evidence may be adduced to shew the malice of the Defendant. Has not Mr. Magee, in *The Dublin Evening Post*, in direct contradiction to repeated positive information, most cruelly, and wickedly charged the Plaintiff with the murder of the Billiard Marker?—In another paragraph did he not, in pursuance of his infernal purpose, say, that the ghost of the supposed murdered man haunted the dwelling-house of the alledged murderer, terrifying the innocent virtuous wife of the accused party, the mother of a numerous and beautiful family of children, who were afraid to stir out of their rooms after dark, lest they should meet the ghost of this supposed victim? and shall it now be said that this *diabolical disturber of the peace of families*, whose *rancour of heart* has made him thus bold, shall be admitted to plead, that he was taken by surprise!

We have proved the malice of the offender by the work of his own hands.—All mankind will see the extent of his unprovoked malice.—Gentlemen of the Jury, three letters have been given in evidence and proved to be in the hand writing of Mr. Magee. Good God! could it be believed

lieved, without such positive evidence as has been produced, that at the present enlightened period, there could be such a wretch existing!!! Not content to blast his character by a repetition of wicked paragraphs for several months—Not satisfied with holding him up an object of horror, and in consequence endeavouring to deprive him of every respectable connexion in society—His rage not glutted with hunting him from Dublin to distant parts of the kingdom—to complete his ruin, he adds one stroke to finish his character:—He pursues the Plaintiff—even into the *private recesses of that sanctuary* where the worst and most abandoned of mankind—the *felon* and the *murderer* should seek for peace, if peace were any where to be had—in the *bosom of an amiable wife*. This consolation Mr. *Magee* had the inhumanity to endeavour to deprive him of—by representing him as a murderer, and abandoned miscreant.—Instead of the caresses of seven or eight children, who had been taught to look up to him with duty and affection, Mr. *Magee* strives to implant in their tender minds the abhorrence due to a criminal!

You have heard, Gentlemen, the letter Mr. *Magee* wrote to Mrs. *Daly*, in the absence of her husband.—Can any circumstance parallel the atrocity of it.—Why was that letter addressed to her? Nothing could be imputed to her—she did not offend Mr. *Magee*—she is the virtuous mother of a numerous family of children, free from reproach of any kind, respected, admired and beloved!—Will any man be bold enough to say, he may, with impunity, destroy the private peace of such a mother, surrounded by a groupe of young and innocent children?—You can have no doubt upon your minds of the intentions of the Defendant—a witness has proved it to be the hand writing of Mr. *Magee*;

Magee : two other letters written to Mrs. *Elsen* at Cork, with a similar wicked purpose, also proved to be the writing of Mr. *Magee*, corroborate and strengthen his guilt. He has not produced the least evidence to contradict those letters, or to justify them.

It has been stated, that the Defendant has been imprisoned, and that his business has been injured thereby, but this is no compensation to the Plaintiff for the injury he has sustained. If one man murders another, the length of the imprisonment of the criminal is never considered. The Defendant's imprisonment was in consequence of his crimes, it is no compensation to the Plaintiff.—Imprisonment may be an atonement for public injury, but can be no retribution to an individual.

Let me now, Gentlemen, make a few observations as to the *quantum* of damages. It has been stated to you as law, that you can give no damages but for what directly appears on the declaration.—But Gentlemen, it is not so. The law of this country is, that in all cases of actions for scandalous words, you may give evidence not only of the words spoken, but also of the injury sustained, and the plaintiff is entitled to damages from this evidence. It has been alledged, that the Defendant suffered by his imprisonment. But what injury has been sustained by the plaintiff, in being represented as associating with gamblers, and held out as a miscreant, an object of scorn to the world !

Gentlemen of the Jury, you will judge with what degree of malevolence the Defendant has traduced his character. His own letters to the wife of the Plaintiff and to Mrs. *Elsen* will bear testimony. He had leisure to write those letters tho' in confinement, and at the very time of those abusive publications in his newspapers. Evidence
has

has been laid before you, that in three months only the Plaintiff sustained an injury of 1755*l.* owing to those publications.

Gentlemen of the Jury, you will find your verdict upon the evidence which has been given in this case.—Your issue is, to try whether the Defendant did publish this libel, or not.—If you find he has not, you will say so, if you believe that he did publish this libel, then you will take into consideration what damage the plaintiff has sustained. You have had evidence of the actual loss he has suffered.

I have but a few words more to say.—Gentlemen of the Jury, by the verdict you will give this day, you will hold out to the community in what light a Jury of the City of Dublin value a good character. It has been made a public cause—much depends upon it. Your verdict, no doubt, will establish, how far a good character in life is to be held sacred, and according to the damages you give, others in future may be deterred, from the Defendant's example.

LORD CLONMEL.

“ *Gentlemen of the Jury,*

“ In this case the counsel on both sides have so fully spoken to evidence, that little remains for me to add: Gentlemen, This is an action on the case, in which *Richard Daly*, Manager of the Theatre Royal of Dublin and Cork, is the Plaintiff, and *John Magee*, Printer, Defendant, for a libel published in a newspaper called *The Dublin Evening Post* of the 28th of May, 1789; of which said newspaper, said *John Magee* is the Printer. No specific damages are laid in the declaration. The case turns upon this point, whether this publication was A LIBEL, OR NOT?—This is a case peculiarly

peculiarly the province of the Jury to determine; it is your verdict and not mine. The Court will tell you what the law is, you will find upon the fact. The Court has nothing to do as to the credit of witnesses, you are the only judges of that.

“ As soon as I have gone thro’ the evidence which has been given in the case, I shall then make some observations on the objections which have been made as to the point of law in this case.

“ In support of this declaration, the first evidence was, Mr. *Charles Esfe*, Secretary to the Commissioners of the Stamp-Office; he proved two affidavits made by the Defendant—that he is the sole proprietor and publisher of *The Dublin Evening Post* and *Magee’s Weekly Packet*.

“ The next witness was Sir *Frederick Flood*, he proved that one of the affidavits was sworn before him, by *John Magee*—In this affidavit, *Magee* swore, he was the sole Proprietor of the newspapers, called *The Dublin Evening Post*, and *Magee’s Weekly Packet*; this affidavit bears date the 28th of January, 1785.

“ The next witness was *Charles Pigot*, he says, he is Assistant to the Register of the Advertisements in newspapers; he proves, that there is regularly delivered into the Stamp-Office, by a person of the name *Amelia Freel*, one of each publication of every newspaper. *Pigot* proves the delivery of *The Dublin Evening Post*, down so late as Saturday last. He proves *The Dublin Evening Post* of the 28th of May, 1789, to be one of the papers so delivered into the Register’s Office in the Stamp-Office.

“ Mr. *Robert Hitchcock*, Deputy Manager of the Theatre Royal, was next examined. He says he has been with Mr. *Daly* as Prompter, and Deputy Manager, since the year 1781—that the Dublin Theatre,

Theatre, at the time he came over from England, was in great disrepute, owing, he supposed, to bad actors, and bad management; that from that period, to the month of *May*, 1789, the Theatre progressively improved and flourished; which he attributed to the exertions of Mr. *Daly*; that the receipts encreased every year, and that previous to the appearance of the poem, stated in the declaration, there was every reasonable prospect of its future success. Upon being asked if he read the poem, he answered he had; he was then asked, who was meant by the words *Young Roscius*, and *Ricardo*, he replied Mr. *Daly*. This witness farther says, that after the publication, the receipts of the Theatre decreased very much, which he principally attributed to this publication—that the subsequent paragraphs had a very visible effect upon the Plaintiff; the agitation of his mind was very great, and he was prevented by this agitation, from attending to his business. In his cross-examination, he said that the receipts of the Theatre from *November* 1789, to *March* 1790, were much worse than they had been the season before; that as a proof how much the public were prejudiced against the Plaintiff, notwithstanding the very bad houses on the Manager's nights, the benefits which immediately followed, were better, upon an average, than he ever remembered. He was asked to what he attributed the great decrease of the receipts of the Theatre? and answered, he could attribute it to no other cause than the publication of this poem, and the subsequent paragraphs.

“ *Pigot* was again called. He proved the newspapers called *The Dublin Evening Post* of the dates of *June* 20, 22, *July* 16, 18, 30, *August* 4, 11, 22, 25, 29, *September* 13, 24, *October* 12, 14, and *November* 12. These papers were produced

duced by the Plaintiff, to shew the *malice* of the Defendant; for the gist of the action was the malicious intention of the Defendant; which flowed thro' every one of the subsequent publications; the Counsel for the Defendant objected to the admission of this evidence, and their objections were over-ruled, on the ground of law, as will be stated to you in due course. Another objection was made by the Counsel for the Defendant, that *Freel*, the person who served the Stamp-Office with these newspapers, ought to have been called, and that objection was over-ruled. Those several newspapers were produced, to shew the malice which existed in the mind of *Magee*. I have taken abstracts of them; they explain the motives of the publication; but you will consider whether it was published without any intention of doing mischief; in that case you will find for the Defendant; on the contrary, if you believe that this publication was published with a malignant design, you ought to find for the Plaintiff. I must premise, you can hardly conceive the human mind capable of more malignancy:—There has been no excuse, no justification set up; it did come out in evidence from his father in law, that the Defendant had been in a deranged state of mind, but no man will venture to say, that can be set up in justification. In those publications he traduced the Plaintiff, as a murderer, and a cheating villain, revelling in newgate with a set of ruffians, that he wanted to insure his Theatre for 8000*l.* for the purpose of burning it, and thereby to impose upon the Insurers. He charged him with murdering a marker. He represented him as preparing to open the Theatre with a rabble. These publications were produced to shew the malignancy of the Defendant.

Laurence

“ *Laurence Fay* was examined; he proved three letters written by the Defendant; two of those letters were written by Defendant, to Mrs. *Eften*, and one, written to Mrs. *Daly*, wherein the Defendant calls her husband—the Plaintiff, the most infernal ruffian unhanged!—In the Defendant’s letters to Mrs. *Eften*, he bids her to fly from that ruffian and villain!

“ The next evidence was Lord *Donoughmore*, he proved an affidavit made by the Defendant, that he was the sole proprietor of *The Dublin Evening Post*, and *Magee’s Weekly Packet*. At the time Lord *Donoughmore* took his affidavit, his Lordship was Commissioner of Stamps.

“ *Robert Hitchcock* was again called; he swore he understood the word *Dasher* meant the Plaintiff;—he says the receipts of the Theatre from November 1789, to March 1790, fell as low as in 1781;—says, he attributes that to the publication in *The Dublin Evening Post*;—says, that when *Astley’s* Theatre was open in 1788, there were full houses at the Theatre Royal, but in consequence of those abusive paragraphs, the public shewed a dislike of Mr. *Daly*, and did not attend the Theatre as usual; the public had an aversion to him, and declared they would not go to the Theatre for his benefit, but would go to the benefit of any other person;— he farther says, that Mr. *Daly* was so much affected by those publications, he was unable to attend common business.

“ *William O’Reilly* was the next witness produced. He said, he was one of the performers; that, the Theatre was much neglected except on benefit nights; that the public said, Mr. *Daly* was a villain, and they would not go to his Theatre, they told him—“you shall not be a loser, we will go on your benefit;” said, he never heard any reason assigned for it, never heard any accusation

against Mr. *Daly*, but in the newspaper; on his cross-examination, he said, when Mr. *King* performed, there were full houses. In the season of 1789, says, not any remissness of Mr. *Daly* was the cause of the thinness of company at that time and that there was no neglect of the Manager. The witness made use of an arch expression—the representations were “ admirably performed ” and “ miserably neglected ”. He mentioned the declaration of the English Actors who came over from England, they spoke well of Mr. *Daly*, and promised to do so when they returned, except one man who owed him money, and ran away; said, the abuse in newspapers, was the occasion of all *Daly's* misfortunes; said, *The Dublin Evening Post* sometimes sold for sixpence a-piece.

The next witness that was examined was *Matthias O'Mara*. He had been box-keeper, the evidence that *Mara* gave was, that in June 1789, he had some difference with the Plaintiff, that the Defendant came to this witness, and asked him if he could give the Defendant any information about the murder of the *Marker*; the Defendant said he would hang *Daly*, for the murder of the *Marker*; the Defendant had a second and then a third conversation with the witness at Dunleary, who then told the Defendant, if he prosecuted the Plaintiff, for the alledged murder of the *Marker*, the Defendant would fail in such prosecution; for he, the witness, could prove that the *Marker*, six weeks after the rumour of the supposed murder having been committed, came to the house of the witness and dined there, and appeared to be as well and in as good health as he had known him for twelve years before, and he, *Mara*, and his wife would prove it, tho' he was at enmity with the Plaintiff, after this, the publication of the paragraph appeared, accusing

cusing the Plaintiff with being the murderer of the *Marker*. Is there to be found an instance of a more singular proof of malice, subsisting in a human mind? when he had received the best information, that the *Marker* had been seen in perfect health, six weeks after the rumour of his death had been propagated.

“ Mr. *John Kennedy* was the next witness that was examined; and he told you, that he had been Treasurer at the Theatre from 1780 to 1789; said, the people came to the Theatre with swords and pistols every night, there were more riots than the witness ever before saw or heard of, immediately after the publication; he said, the persons who filled the gallery would call out “ a groan for the *Dasher*; a groan for the *Sham*; a clap for *Magee*; a clap for *The Man of Ireland*! put out the lights.” The witness said, that from 1780 to the beginning of 1789, the receipts of the Theatre increased;—that after the publications, riots became frequent at the Theatre, and the receipts decreased;—that the engagement with Mr. *Ryder* was for 20*l.* per night—that he played to audiences, when there was not 2*l.* in the whole house; after these publications, many said that *Daly* was a ruined man. Upon the witnesses cross-examination, he said, that when Miss *Farren* performed, there were crowded houses;—he said, the receipts of the Theatre were from 5,000*l.* to 10,000*l.* per year.

“ The next witness that was examined was *James Heron*, Treasurer;—he says, that in the last season from November 1789, to January 20, 1790, there was 1755*l.* less than the former season for that time produced:—upon his cross-examination he said, that in the last season—he could not say, whether there was any performer of equal estimation with *King*;—he was asked, whether the

the houses where thin, from the want of eminent performers? he replied that Mrs. *Kennedy* performed; and she was an actress of much merit;—He said on benefit nights, there would be crowded houses;—on stock nights the houses were thinly attended.

“ *Charles Pigot* was again called, he proved that the *Weekly Packet* was printed by *Magee*; and that the newspapers produced in Court, were those delivered into the Stamp Office by the person who usually supplied that office with newspapers.

“ *Mr. William Dawson* was the next witness that was produced—He says the last time he went to London it was for the purpose of engaging performers;—says, he endeavoured to make an engagement with Mrs. *Crawford* and others; but they refused to come over, unless they received additional terms; as they apprehended they could not perform on the stage with safety; they were in so much dread of *Magee’s* publications. The witness said that Mr. *Daly* was so distressed by those publications he was not able to attend to his business. That the wife and children of the Plaintiff were terrified by the publications of the Defendant, that they were deterred from going up stairs after day-light.—Said that immediately after those publications there were riots at the Theatre, and the people in the gallery used to call out “ a groan for the *Dasher*;—a groan for the *Sham*; “ a clap for the *Man of Ireland*,—out with the “ lights.” Mr. *Dawson* further said, that Mr. *Ryder* told him in London, that *Daly* was a ruined man; witness said that *Francis Higgins* was the person meant by the *Sham*, and that *Daly* was the person meant by the *Dasher*. He was asked whether there was any intimacy between Mr. *Daly* and Mr. *Higgins*? He said no more than between man and man.

“ To

“ To shew the continued malice, a number of paragraphs published in several newspapers, entitled *The Dublin Evening Post*, were then read.

“ It was said that the like abuse was thrown out against the Defendant himself, but that is no circumstance of mitigation.—If any man is suffered to write libels on another, he may take from him every means of supporting himself upon earth.—What was the motive of this abuse? the publication in *The Dublin Evening Post* states—that he (if you believe that *Daly* was meant) associated with gamblers, and entered into a conspiracy to cheat certain Lottery-office-keepers, by means of a Carrier Pigeon.

“ The case being rested on the part of the Plaintiff; the only witness produced on the part of the Defendant was Mr. *William Gilbert*, father-in-law to *Magee*. He says, that the Defendant, from the time of the death of Mrs. *Magee*, was unable to attend his shop, or manage his business.—Mrs. *Magee* died in *March*, 1789, that the Defendant was taken on *Fiats*, one at the suit of *Brennan*, another at the suit of *Tracey*, another at the suit of *Higgins*, and another at the suit of *Daly*. The witness says, that *Magee* was arrested at one time in his shop, and carried to the house of the bailiffs. He gave bail in *July*.—Was in *November* taken on a warrant, and carried to the New Prison—but certainly he could not be there at the suit of Mr. *Daly*; he must have been committed there under the sentence of the Court. The witness said, that the Defendant's mind has been much affected, that he has suffered much in his property, by not being able to attend to the Lottery Business. The witness said he did not believe *Magee's* paper contained any paragraph tending to defame or vilify Mr. *Daly*;

Daly; and said that *Magee* was not able to give bail to *Daly*, for the sum sworn to by him.

“ You have now before you, Gentlemen of the Jury, the evidence for the Plaintiff, and for the Defendant. I will now mention to you, what the charge here is;—this Declaration states the station in life of the Plaintiff, it also states the publication of the Poem. The Declaration goes on and states---that the said Poem was published with intent to drive the Plaintiff from the management of the Theatre. The libel says, *Young Roscius* associated with gamblers---(if you believe that by *Roscius* was meant *Daly*)---he is represented as associating with gamblers;---he is represented to be at the door of a gaol, as a bankrupt and a cheat;---that he had entered into a conspiracy to cheat certain Lottery-office-keepers, by means of a carrier Pidgeon, by getting some information of the success of certain numbers, before the post or express could arrive; and thereby have an unfair advantage over the Lottery-office-keepers. You will see if those inuendos apply to the plaintiff.

“ He is represented as prostituting his person to women for money;---He is represented as having no other means of getting money. Upon this evidence there are two questions for your consideration; as to whether this being a libel or not? That is a question of law for the Court to ascertain, and, has been fully determined, from 1757, and long earlier, in the case of the Dean of St Asaph; Lord *Mansfield* said, (who is now about 80 years of age) that from the earliest of his recollection he never knew it otherwise. The question for the Jury is what I am now going to state to you:---Whether you believe in your consciences that Mr. *Magee* is the printer and publisher of the libel?

libel? I believe you need not waste your time upon this point; Mr. *Magee's* own oath says he is.

"The next is respecting the inuendoes as laid in the declaration—you are to consider deliberately, whether by *Roscus* and *Richardo* the Plaintiff is meant or not?—If there is not sufficient evidence to fully satisfy you, if you are not *perfectly convinced in your consciences*, that by *Roscus* and *Richardo*, Mr. *Daly* is meant, in that case you will find most undoubtedly for the Defendant. But if you believe the evidences (and there is no evidence against it) that *Roscus* and *Richardo* do mean *Daly*. There may be twenty foolish inuendoes put into one libel, as that about *Billington*;—you are not to enquire whether all the inuendoes apply to a plaintiff, there may be some put in, which cannot be developed. If you are positively satisfied in your minds—that *Roscus*, who is described as the Manager of a Theatre; means Mr. *Daly*, you ought to find for the Plaintiff.

"There is a third point, which is the only difficulty in the case, and that is a question I can give no assistance in—that is, as to the *quantum* of damages. I must, however, make a few observations; you are impartially to consider the respective stations in life of the Plaintiff and the Defendant. I have heard it said, that in assessing damages, the parties are to be considered equal, I am not of that opinion:—I think they ought to be proportioned to the injuries sustained, and to the situation of the Defendant. I say, you ought not to find such excessive damages as may amount to imprisonment for life, that if he was not able to pay the damages, a Defendant must rot in gaol until he does. No, Gentlemen, in those cases it is always better to lean towards the Defendant. Evidence
of

of their different stations in life has been laid before you. The Plaintiff in this case has stated himself to be a man of credit in society. His situation peculiarly depends, he says, upon the good will of the public—upon the favour which may be shewn him—withdraw that and you make him odious to the public ;—there is not a day or night he may not be ruined ; he is a person most likely to be injured in the tenderest point in his character. Here was a libel holding him out in a ridiculous light to society. In the mean time the Defendant was living by the sale of those publications, they were sometimes sold for 6d a-piece, instead of 2d. By the publication of those newspapers, the Defendant got money—he got money by vending of slander. There was evidence given of paragraphs in other papers published by the Defendant, which shewed his continued malice. It was said, by the Counsel for the Defendant ; you were not to give damages for any other libel than the one set out in the declaration ; but the *malice* was set out in the declaration, and the Plaintiff had a right to go into evidence to prove the malice. This is not the case of a libel being innocently and inadvertently published by mistake—*no such thing* ; there was a continuation of publications.

“ Gentlemen of the Jury, if I am mistaken as to the point of law, the party may have a new trial, and my mistake (if I do mistake) may be set right. If this is no libel, the Plaintiff has no right to damages. If you believe the Defendant published this libel, you ought to find for the Plaintiff.

“ I am glad I am addressing myself to a set of Jurors so very respectable, who know the value of character. The LIBERTY OF THE PRESS,
Gentlemen

Gentlemen of the Jury, is the **GLORY OF OUR CONSTITUTION** ; but the *prostitution* of the *Press* is the *greatest curse*. The *Liberty of the Press* has been the cause of introducing *Freedom into the World* ;—the *Licentiousness* of the *Press*, has sometimes been the *destruction of that Freedom*. A man who prints abusive libels, is, with great justice, responsible for them. A man is not to traduce another, if he does not act according to his inclinations, he is not to levy contributions, by abusive libels. Miserable indeed, would this country be, were a libeller not to be responsible. The sum marked by the Plaintiff here as damages is 8,000 *l.* that is a very large sum, but it should not to be the measure you ought to follow. You, Gentlemen of the Jury are to judge of the *quantum* of damages ; the law with great propriety has made you the sole judges of that. There are instances where Jurors have given too large a sum as damages, and their verdict has been set aside ; if you should find for the Plaintiff, you are the best judges how much the Plaintiff has been injured, you know the value of reputation, and I now leave it to you.”

Counsel for Defendant moved, that the record be sent up to the Jury.

The Court gave the record up to the Jury.

The Jury retired from their box into their room, and in about twenty minutes they returned into their box and gave their verdict as follows :


The VERDICT of the JURY.

We find for the Plaintiff with two hundred pounds damages, and fixpence costs.

Counsel for Defendant. We shall take a bill of exceptions.

Exc, EHR

F I N I S.

 The Compiler of the above, tho' his aim thro' the whole has been STRICTLY TO ADHERE TO TRUTH, acknowledges it was not in his power to do justice to the ELOQUENCE and ABILITY of the COUNSEL on both sides; or to the great CANDOUR, PERSPICUITY, and IMPARTIALITY which so eminently distinguished the JUDGE, thro' the course of the Trial, and in his delivering the charge to the JURY.

